



4310-JB-P

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Land Management**

**[LLCOF0200-L12200000-DU0000]**

#### **Notice of Final Supplementary Rules for Public Lands in Colorado: Public Lands Administered by the Bureau of Land Management, Royal Gorge Field Office, Arkansas River Travel Management Area in Chaffee, Custer, and Fremont Counties**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Final Supplementary Rules.

**SUMMARY:** The Bureau of Land Management (BLM) is establishing supplementary rules to regulate conduct on public lands within the Arkansas River Travel Management Area (ARTMA) in Chaffee, Custer, and Fremont Counties, Colorado. These supplementary rules address decisions found in the Arkansas River Travel Management Plan (ARTMP). Travel management actions and changes to the off-highway vehicle (OHV) designations were detailed and analyzed in an Environmental Assessment (EA). The Royal Gorge Field Office (RGFO) signed a Finding of No Significant Impact (FONSI) on December 18, 2007. The BLM issued two Decision Records following the ARTMP EA: one on April 29, 2008, to amend OHV designations identified in the EA, and a second on May 21, 2008, to implement the travel management actions identified in the EA. The rules were published in the Federal Register as a proposal on July 23, 2010 and public comment was solicited. The Decision Records included revising travel regulations for the area including bicycle use, identifying shooting restrictions, and

limiting an area to a certain vehicle type. These travel regulations are designed to provide for public health and safety and to protect natural resources within the ARTMA.

**EFFECTIVE DATE:** These supplementary rules are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may send inquiries by mail to the BLM Royal Gorge Field Office, 3028 East Main Street, Cañon City, Colorado 81212; or by e-mail to [rgfo\\_comments@blm.gov](mailto:rgfo_comments@blm.gov) and include “Final Supplementary Rules” in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Keith Berger, Field Manager, BLM Royal Gorge Field Office, at the address listed above, or by phone at 719-269-8500.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of Public Comments and Final Supplementary Rules
- III. Procedural Matters
- IV. Final Supplementary Rules

#### **I. Background**

The ARTMA covers approximately 240,555 acres of public land within Chaffee, Custer, and Fremont Counties, Colorado, in the following townships:

#### New Mexico Principal Meridian

Tps. 49 to 51 N., R. 8 E.

Tps. 48 to 50 N., R. 9 E.

Tps. 47 to 49 N., R. 10 E.

Tps. 47 to 49 N., R. 11 E.

Tps. 47 to 49 N., R. 12 E.

#### Sixth Principal Meridian

Tps. 18 to 19 S., R. 70 W.

Tps. 18 to 22 S., R. 71 W.

Tps. 17 to 22 S., R. 72 W.

Tps. 17 to 22 S., R. 73 W.

The ARTMA includes the Methodist Mountain Area south of Salida, Colorado (2,314 acres), located in T. 49 N., R. 9 E., secs. 7 to 10, inclusive, secs. 15 to 18, inclusive, and T. 49 N., R. 8 E., secs. 12 and 13. The Turkey Rock Area near Howard, Colorado (361 acres), is located in T. 48 N., R. 10 E., secs. 1 and 2, and the Turkey Rock Trials Area (52 acres) is located in T. 48 N., R. 10 E., secs. 1 and 2, within the Turkey Rock Area. Part of the ARTMA lies within the Arkansas River Special Recreation Management Area.

Travel management actions and changes to the OHV designations for the ARTMA were analyzed in the ARTMP EA and documented in the two 2008 Decision Records

including the one that amended the Royal Gorge Resource Management Plan. Proposed Supplementary Rules were developed to enforce the decisions made in these documents. The proposed supplementary rules were published in the Federal Register (75 FR 43200) on July 23, 2010, and the public comment period ended September 21, 2010. The final supplementary rules are consistent with decisions found in the ARTMP and the BLM's National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands (2001).

## II. Discussion of Public Comments and Final Supplementary Rules

The BLM received three comment letters during the 60-day public comment period. In response to these comments, the BLM has:

- Revised proposed rule number 1 to clarify that all motorized travel is limited to designated roads and trails, and for purposes of parking and camping travel is allowed up to 100 feet from the centerline of a road or trail only if this travel does not cause or is unlikely to cause significant undue damage to or disturbances of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other other uses of the public lands;
- Clarified allowable uses under proposed rule number 4 for the Turkey Rock Trials Area; and
- Added a fifth rule to reflect an ARTMP decision regarding day use in the Turkey Rock Trials Area.

In addition, the BLM has changed the heading “Exceptions” to “Exemptions,” added the Taylor Grazing Act to the penalties provision, and reworded several of the proposed supplementary rules to reflect the third-person style.

One commenter expressed concern about proposed supplementary rule number 2. However, the commenter did not oppose this rule or any of the other proposed supplementary rules since there is a good working relationship between the BLM Royal Gorge Field Office and the local mountain bike community. Proposed supplementary rule number 2, which restricts mountain bicycle travel to designated routes that are identified as available for this use, was analyzed in the 2008 ARTMP EA. This supplementary rule is essential to enforce the decision found in the ARTMP and Decision Record that was made to protect resources.

A second commenter suggested that a recreational target shooting closure in the Cotopaxi, Colorado, area should be added to the proposed supplementary rules. The area identified by the commenter was not addressed in the ARTMP, and therefore no supplementary rules were proposed or studied for this area. The proposed supplementary rules were not revised in response to this comment because the suggested closure cannot occur without revising the ARTMP.

A third commenter identified several issues of concern. The commenter suggested that proposed supplementary rule number 1 be clarified in order to carry out the intent of the Decision Record. The commenter thought that the intent of the Decision Record was to

prohibit all motor vehicle travel more than 100 feet in any direction off a designated route and that as written, this restriction would not carry out the BLM's intent of allowing vehicle travel within the 100-foot corridor for the purpose of parking. As proposed, rule number 1 stated, "You must not operate a motor vehicle more than 100 feet in any direction off a designated road in the Arkansas River Travel Management Plan (TMP) area." In response to this comment, proposed supplementary rule number 1 has been revised as follows: "All motorized travel is limited to designated roads and trails. For the purposes of parking, including camping, travel is allowed up to 100 feet from the centerline of a designated road or trail only if this travel does not cause or is unlikely to cause significant undue damage to or disturbances of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other other uses of the public lands."

The commenter also asked that proposed rule number 2 be revised to prohibit the possession of a mountain bike off of designated trails. As proposed, rule number 2 stated, "You must not ride mountain bicycles other than on roads and trails designated open to mountain bicycles by a Bureau of Land Management (BLM) sign or map in the Arkansas River TMP area." The prohibition recommended by the commenter does not follow the language set forth in the ARTMP and Decision Record for limiting travel using bicycles to designated roads and trails; therefore, the BLM has not revised the proposed rule in response to this comment.

The commenter also expressed concern with proposed rule number 4, which provided as follows: "You may not operate a motorized vehicle within the area known as Turkey

Rock Trials Area (52 acres) unless it is a motorcycle specifically designed for observed trials riding, including rear wheel drive and universal trial tires with a width that does not exceed a 4.00 inch cross-section.” The commenter stated that “observed trials riding” should be better defined to clarify the allowable use. The BLM agrees with the comment that “observed trials riding” must be carefully defined; however, there is concern that by further defining the type of equipment, any changes in the observed trials industry could make the rule obsolete. As a result, the proposed rule was changed to eliminate equipment details and simplify the phrase as “motorcycle specifically designed for observed trials riding.” This change will rule out non-trials type motorcycles and should also capture any changes in the motorcycle trials industry.

Finally, the commenter noted that the ARTMP identified the Turkey Rock Area as day-use only and asked the BLM to establish a supplementary rule to reflect that status. The ARTMP limits trials bike use at the Turkey Rock Trials Area to “day use” only. The original proposal unintentionally omitted this detail but it was identified as a management action in the Decision Record so the BLM has added a supplementary rule that provides that motorcycles specifically designed for observed trials riding are prohibited within the Turkey Rock Trials Area after sunset and before sunrise. However, the new supplementary rule does not close the area to all night uses. Camping and hiking will still be permitted at night in the Turkey Rock Trials Area.

### III. Procedural Matters

#### Executive Order 12866, Regulatory Planning and Review

The final supplementary rules are not significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They do not have an annual effect of \$100 million or more on the economy. They do not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. They do not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They do not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. The final supplementary rules merely establish rules of conduct for public use of a limited area of public lands.

#### National Environmental Policy Act (NEPA)

A 'Notice of Intent to Prepare the Arkansas River TMP and Amend the Royal Gorge Resource Management Plan' was published in the Federal Register on June 9, 2003 (68 FR 34417). In compliance with NEPA, Environmental Assessment CO-200-2006-0086EA fully analyzed the environmental effects of the motorized and non-motorized travel restrictions, and the restrictions on recreational target shooting that are addressed in these final supplementary rules. A 45-day public comment period on the EA began on June 19, 2007. Following analysis of the public comments, the BLM signed a FONSI on December 18, 2007, and issued two Decision Records on the ARTMP: one on April 29, 2008, and the other on May 21, 2008. The Decision Records approved management actions that are addressed in the supplementary rules included in this notice. The final supplementary rules will allow the BLM to enforce decisions developed to protect public health, safety, and the public lands located within the ARTMA. The final supplementary

rules do not change or alter any of the NEPA analysis completed in the EA or any of the Decision Records. In compliance with the NEPA, the BLM reviewed in the EA the actions the final supplementary rules will enforce, and concluded that these actions do not constitute major Federal actions under 42 U.S.C. 4332(2)(C), Section 102(2)(C), so the RGFO was able to reach a FONSI. The BLM placed the EA and FONSI on file in the BLM Administrative Record at the RGFO.

#### Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601-612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

#### Small Business Regulatory Enforcement Fairness Act

These final supplementary rules are not considered a ‘major rule’ as defined under 5 U.S.C. 804(2). The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

#### Unfunded Mandates Reform Act

These final supplementary rules will not impose an unfunded mandate on state, local, or

tribal governments in the aggregate, or the private sector, of more than \$100 million per year; nor will they have a significant or unique effect on small governments. The final supplementary rules will have no effect on governmental or tribal entities and will impose no requirements on any of these entities. The final supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The final supplementary rules are not government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the final supplementary rules will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the supplementary rules will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these final supplementary

rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM determined that these supplementary rules do not include policies that have tribal implications. The supplementary rules merely establish rules of conduct for public use of a limited area of public land and do not affect land held for the benefit of Indians or Alaska Natives or impede their rights.

Paperwork Reduction Act

The final supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. Moreover, any information collection that may result from Federal criminal investigations or prosecutions conducted under these supplementary rules is exempt under the provisions of 44 U.S.C. 3518(c)(1).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM determined that these final supplementary rules are not a significant energy action, and that they will not have an adverse effect on energy supplies, distribution, or use.

IV. Final Supplementary Rules

Author

The principal author of these supplementary rules is Leah Quesenberry, Associate District Manager, BLM Colorado Front Range District.

For the reasons stated in the preamble, and under the authority of the Federal Land Policy and Management Act , 43 U.S.C. 1733 and 1740, the Taylor Grazing Act, 43 U.S.C. 315a, , and 43 CFR 8365.1-6, the BLM Colorado State Director establishes the following final supplementary rules for public lands within the ARTMA, Colorado, to read as follows:

**FINAL SUPPLEMENTARY RULES FOR THE ARKANSAS RIVER TRAVEL**  
**MANAGEMENT AREA, BUREAU OF LAND MANAGEMENT,**  
**ROYAL GORGE FIELD OFFICE, COLORADO.**

1. All motorized travel is limited to designated roads and trails. For the purposes of parking, including camping, travel is allowed up to 100 feet from the centerline of a designated road or trail only if this travel does not cause or is unlikely to cause significant undue damage to or disturbances of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other uses of the public lands.
2. Bicycle riding is limited to designated roads and trails marked open to such use by a Bureau of Land Management (BLM) sign or map.
3. Recreational target shooting is prohibited on all public lands within the Methodist Mountain Area south of Salida (2,314 acres) and the Turkey Rock area near Howard (361 acres). These areas are identified as closed to recreational target

shooting by either a BLM sign or map.

4. Operation of a motorized vehicle within the area known as Turkey Rock Trials Area (52 acres) is limited to motorcycles specifically designed for observed trials riding.
5. Motorcycles specifically designed for observed trials riding are prohibited within the Turkey Rock Trials Area after sunset or before sunrise.

### **Exemptions**

The following persons are exempt from these supplementary rules: any Federal, state, local, and/or military employee acting within the scope of their official duties; members of any organized rescue or fire fighting force performing an official duty; or persons who are expressly authorized or approved by the BLM.

The prohibition of target shooting in Rule 3 has no effect on hunting by licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Parks and Wildlife.

### **Penalties**

Under the Taylor Grazing Act, 43 U.S.C. 315a, any willful violation of these supplementary rules on public lands within a grazing district of the ARTMA is punishable by a fine of not more than \$500. Under Section 303(a) of the Federal Land Policy and Management Act, 43 U.S.C. 1733(a), and 43 CFR 8360.0-7, any person who knowingly and willfully violates any of these supplementary rules on public lands within the ARTMA may be tried before a United States Magistrate and fined no more than

\$1,000, imprisoned for no more than 12 months, or both.

Such violations may also be subject to the enhanced fines provided for by 18 U.S.C.  
3571.

Helen Hankins

Bureau of Land Management

State Director

Colorado State Office

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